IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT JODHPUR

J U D G M E N T

Sarvjeet Singh Vs. State of Rajasthan

D.B. CRIMINAL APPEAL NO.930/2003
against the judgment dt.31.7.2003
passed by Addl.Sessions Judge (F.T.) Hanumangarh,
in Sessions Case No.47/2002.

Date of Judgment: Sept.01,2006

P R E S E N T

HON'BLE MR.JUSTICE N.N.MATHUR
HON'BLE MR.JUSTICE R.P.VYAS

Mr.Mridul Jain, for appellant.
Mr.O.P.Rathi, Public Prosecutor.

BY THE COURT: **(PER HON'BLE MR.MATHUR J.)**

This appeal is directed against the judgment dated 31.7.2003 passed by the learned Additional Sessions Judge (Fast Track), Hanumangarh, convicting appellant Sarvjeet Singh of offence under section 307 IPC and sentencing to undergo imprisonment for life and to pay a fine of Rs.500/- and in default of payment, to further undergo one month's rigorous imprisonment.

The prosecution case as disclosed during trial is that the Excise Department had granted a liquor contract in favour of injured Omprakash. On 14.7.1999 at about 4.40 PM while P.W.3 Hanuman Singh claimed to be sitting on the liquor shop, his younger brother injured Omprakash, P.W.4 Mool Singh, P.W.5 Shankerlal and P.W.6 Banwarilal were playing cards beneath a "Keekar" tree at the bus stand at some distance from the shop. At that time, a vehicle bearing No.RJ 14G 5423 arrived. Two persons alighted from the said vehicle, one of them was of stout body viz; appellant Sarvjeet Singh. He gave a "lalkaar" to kill Omprakash and gave a "kulhari" blow on his head. Other person gave a lathi blow. As a result, Omprakash fell down. On this information, a case was registered by the police for the offence under section 307 IPC at Police Station, Pilibanga. After usual investigation, the police laid chargesheet against the appellant Sarvjeet Singh and one Kaka Singh for the offence u/ss.307, 307/34 IPC. The appellant denied the charges levelled against him and claimed trial. The prosecution adduced ocular and oral evidence. In his statement u/s.313 CrPC, appellant denied the correctness of the prosecution evidence appearing against him. The learned trial Court acquitted accused Kaka Singh. However, the trial Court having found the prosecution case proved against appellant Sarvjeet Singh, convicted & sentenced him in the manner noticed above.

We have heard learned counsel for the appellant and perused the record. The conviction of appellant Sarvjeet Singh is based on ocular evidence of P.W.3 Hanuman Singh. The other eye witnesses viz; P.W.1 Sukhdev Singh, P.W.2 Sajan Ram, P.W.4 Mool Singh, P.W.5 Shankerlal and P.W.6 Banwari have not supported the prosecution case and, as such, they were declared hostile. Injured Omprakash could not be examined as he died on 31.10.2001. It may be stated that the incident is of 14th July, 1999 and Omprakash died on 31.10.2001. There is nothing on record to show that his death has any relevance with the incident of 14.7.1999.

P.W.12 Dr.Ajay John examined the injured Omprakash vide Ex.P.25 and noticed the injuries on his person as follows:

> "1. Large jagged wound on the Rt. fronto parietal region of the scalp with skull & brain & bone tissue protruding through;
>
> 2. Laceration/incised wound between Rt. middle & ring fingers, 3cm long x 1cm deep."

As per the doctor, injury No.1 was dangerous and injury No.2 was grievous.

P.W.3 Hanuman Singh is the brother of injured Omprakash. He has reiterated the statement given in the "parcha bayan" Ex.P.6 on the basis of which F.I.R. Ex.P.7 was recorded. In the cross examination, nothing has been elicited to discredit the testimony of this witness. Simply because other witnesses have not supported the prosecution case, the statement of P.W.3 Hanuman Singh cannot be discredited. The F.I.R. was lodged within a hour of incident. Thus, the statement of P.W.3 Hanuman Singh finds corroboration from the medical evidence as well as prompt F.I.R. Thus, the prosecution has succeeded in establishing the fact that appellant Sarvjeet Singh gave a "kulhari" blow on the head of Omprakash with an intention to commit his murder, therefore, he has been rightly convicted of offence u/s.307 IPC.

It is contended by the learned counsel for the appellant that in the facts & circumstances of the case, the sentence of imprisonment is highly excessive. There is some substance in the contention raised by the learned counsel. It appears that during trial, the appellant remained in jail for about six months. During pendency of appeal, he remained in jail for about three years. Looking to the injuries on the person of Omprakash, we are not inclined to reduce the sentence of appellant to the period already undergone i.e. three and half years. In the facts of the case, the

ends of justice would be met, if the sentence awarded to appellant is reduced the period of six years.

Consequently, the appeal is partly allowed. The judgment of the learned Additional Sessions Judge (F.T.), Hanumnagarh dated 31.7.2003 is modified to the extent that the sentence of life imprisonment awarded to appellant Sarvjeet Singh is reduced to six years. The punishment of fine remains intact. Appellant is in jail. He will serve-out the remaining part of the sentence.

(R.P.VYAS), J. **(N.N.MATHUR), J.**

RANKAWAT JK, PS